IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8458 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SABIR HUSEIN @ KWARTERIO ALLARAKHA MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. A.S. Dave for the petitioner and learned AGP Mr. A.J. Desai for the respondents nos.1, 2 and 3.

The detention order dated 3-8-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(i) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that the petitioner is alleged to have been involved in criminal case vide CR no.264/96 registered at Unjha Police Station on 9-10-1996 for the offences made punishable under Secs.395, 397, 398 and 120-B of the Indian Penal Code and Sec.25(1)(b) of the Arms Act. Furthermore, the petitioner is alleged to have been involved in criminal case vide Cr no.167/99 registered at Gomtipur Police Station on 23-7-1999 for the offences made punishable under Secs.140, 147, 149, 120-B, 153, and 395 of IPC and Sec.135(1) of the B.P.Act.

2.1 Over and above that two witnesses on assurance of their anonymity have given statements dated 2-8-1999 and 3-8-1999 respectively disclosing the antisocial activities of the petitioner and have narrated incidents alleged to have occurred on 10-7-1999 and 11-7-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended at the Bar on behalf of the petitioner that the impugned order suffers from the vice of non application of mind, inasmuch as before passing the impugned order, the detaining authority has failed to consider the aspect of cancellation of bail, which was granted to the petitioner in the case registered against him. It is submitted that in the first case registered at Unjha Police Station vide CR no.264/96, the petitioner was released on bail on 27-9-1997. Similarly, in the case registered at Gomtipur Police Station, the petitioner was arrested was arrested on 24-7-1999 and was released on bail on 26-7-1999. That

the detaining authority while passing the impugned order has observed that the petitioner was in police custody as he was arrested under the provisions of Sec.151, Cr.P.C. However, in all probability, the petitioner is likely to be released on bail and after getting himself released on bail, he is likely to indulge into antisocial activity, but nowhere it is stated that the detaining authority has ever considered the aspect of claiming cancellation of bail granted to the petitioner in a pending case so as to prevent the petitioner from indulging into prejudicial activities.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. 1995(2) G.L.H.1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5),Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this court(Coram: C.K.Thakkar & A.L.Dave, JJ.).

6. On scrutiny of the grounds of detention, it appears that the detaining authority has failed to consider the aspect of claiming cancellation of bail which could have been initiated on 2nd August,1999 when information supplied by anonymous witnesses was received. However, there is nothing in the grounds of detention to show that the detaining authority has considered the aspect of cancellation of bail before passing the impugned order.

7. Learned AGP has pointed out para 11 of the affidavit-in-reply filed by the detaining authority dated 24th February,2000 wherein the explanation provided is that the proceedings of claiming cancellation of bail is likely to consume lot of time and as the petitioner was required to be detained immediately, the same has not been resorted to. It is difficult to accept the said submission because the grounds of detention is devoid of any material enumerating antecedents past proximate in time from which it could be inferred that it was immediately necessary to prevent the petitioner as he was likely to indulge into antisocial activity. In view of the said fact, it is difficult to sustain the order of detention as it suffers from the vice of non application of mind.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide

the other contentions raised in the petition.

9. On the basis of the foregoing discussion, the petition is allowed. The order of detention dated 3-8-1999 passed by the respondent no.1-Commissioner of Police, Ahmedabad City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Sabir Husein alias Kwarterio Allarakha Miyana is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

stanley-akt.